THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.24709 of 1998

Dated: 29-08-2007

Between:

The Depot Manager, APSRTC,
Medak District.

.... PETITIONERS

AND

S. Narsimlu and others.

.... RESPONDENTS

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No.24709 of 1998

ORDER:

Heard Sri V.T.M. Prasad, learned counsel for the petitioner and Sri Narasimha Goud for the 1st respondent-workman.

The workman was employed as Conductor with the writ petitioner-Corporation. On 12.9.1991 while the workman was conducting the bus bearing No. AEZ 5617 on the route Yadagirigutta to Medak, a check was exercised by the Corporation at Stage No. 11/9. On discernment of cash and ticket irregularities, a departmental enquiry was initiated. The workman was charged on three counts; viz., a) of having failed to observe the Rule of issue and start; b) of having collected the fare of Rs. 3.50 ps., from a batch of

two passengers at the boarding stage itself at Nacharam Village travelling to Toopran, ex-stages 11 to 9 and on sighting the checking officials, that the workman had torn the tickets from the hand tray and made an attempt to punch those tickets and that those tickets were confiscated before they were being handed over to the passengers and; c) for having failed to collect the fare and not issued tickets to a batch of four passengers found traveling without tickets from Nacharam to Toopran, ex-stages 11 to 9.

After receipt of the explanation from the workman, departmental enquiry was conducted and the punishment of removal from service by proceedings dated 4.12.1991 was imposed. A departmental appeal was pursued unsuccessfully. Eventually the workman laid a claim under Section 2-A(2) of the Industrial Disputes Act, (for short 'the Act') before the Labour Court, Hyderabad. By the impugned Award dated 21.12.1996 in I.D. No. 94/93, the Labour Court interfered with the punishment of removal imposed in disciplinary proceedings on the ground that it was disproportionate and modified it to one of reinstatement of the workman into service with all attendant benefits such as continuity of service etc., but only with 25% of back wages. The workman has not challenged the Award of the Labour Court and hence its conclusions in so far as there was concurrence with the findings in the departmental enquiry have become final. The Labour Court concurred with the conclusion of the workman's guilt as established in the departmental enquiry on all the charges. The Labour Court held that the findings in the departmental enquiry as to the guilt of the workman are sustainable and not liable to be interfered with.

Dealing with the contention of the workman as to disproportionate nature of the punishment of removal imposed, the Labour Court has recorded as

under:

> However, on a careful consideration of the facts and circumstances, having due regard to the gravity of the irregularities, the paltry sum involved, it is made abundantly clear that the removal punishment is very much harsh, disproportionate and that the respondents has not followed the principles of proportionality correctly as held in 1988 LIC Page 834 and render the impugned orders unsustainable. Thus the point is found accordingly in favour of the petitioner.
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> In the result, the petition is allowed setting aside the impugned removal orders while directing the respondent to reinstate the petitioner into service with all attendant benefits such as continuity of service etc., but, only with 25% back wages under the set of circumstances etc., Award is passed accordingly. Necessary orders will be issued within 30days of the publication the award."

The Labour Court clearly misdirected itself on assessing the proportionality of the punishment as it considered that the paltry sum involved renders the punishment of removal harsh and disproportionate. It requires to be noticed that the workman was charged not only with violation of the Rule of "issue and start" but of having collected the fare and failed to issue tickets, which amounts to disregard of the mandatory instructions of then Corporation and negligent conduct in failing to protect the revenues of the Corporation in issuing the tickets after collecting the fare, but also of having collected the fare, failed to issue the tickets after punching them. The departmental enquiry and the Labour Court were in concurrence on this finding too. This is a finding as to serious misconduct of defrauding the Corporation of its revenues as collecting the fare and non-issuance of tickets would not bring the fare collected into the corpus of the Corporation. The quantum of the amount involved is wholly an irrelevant circumstance which the Labour Court had

considered for concluding that the punishment of removal was disproportionate to the charge. The Labour Court has no jurisdiction to interfere with the punishment inflicted in departmental enquiry unless it rationally concludes and on relevant parameters that the punishment inflicted is grossly disproportionate to the mis-conduct alleged and established in the departmental enquiry. That is not the case herein. The workman was found guilty of the serious mis-conduct of having collected the fare, but not issuing tickets, apart from the violation of the mandatory rule of "issue and start" which is a rule enjoined for the purpose of ensuring that the revenues of the Corporation are safeguarded.

Sri Narasimha Goud would alternately contend that the finding of the Labour Court concurring with the finding in the departmental enquiry that the workman was guilty of the mis-conduct as charged is unsustainable. It is contended on this aspect that as the check was conducted after Stage No.11 and when the passengers were proceeding upto stage No.9, and before the workman could issue the tickets having collected the fare, there was no intention of defrauding the Corporation of its revenues. These are aspects that cannot be gone into in this writ petition filed by the employer. The workman has not impeached the conclusions of the Labour Court affirming the conclusions in the departmental enquiry by filing any writ petition himself.

This Court is, therefore, precluded from invalidating the Award of the Labour Court to the extent that it concurs with the finding in the departmental enquiry. This contention is therefore rejected.

For the aforesaid reasons, the writ petition is allowed and the order of the Labour Court-II, Hyderabad in I.D. No.94 of 1993 is quashed.

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GODA RAGHURAM,J

Date: 29th August, 2007

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